



Reprinted
February 4, 2015

SENATE BILL No. 408

DIGEST OF SB 408 (Updated February 3, 2015 3:02 pm - DI 55)

Citations Affected: IC 25-34.1; IC 27-7; IC 32-28.

Synopsis: Real estate brokers and broker companies. Defines "broker company" as a partnership, limited liability company, corporation, or individual acting as a sole proprietorship that is licensed as a broker and, for consideration, undertakes or offers to undertake certain activities with respect to real estate. Provides that an individual, to obtain a broker license, must associate with a broker company (instead of with a managing broker). Provides that a partnership, a limited liability company, or a corporation, to obtain a broker license, must include a licensed broker who qualifies as a managing broker. Defines "managing broker" as an individual who is a broker and whom the real estate commission holds responsible for the actions of the licensees affiliated with the broker company. Provides that an individual, to become a managing broker, must have held an active broker's license for at least two years. Requires a person conducting a broker course to have a permit issued by the real estate commission. Defines "in-house agency relationship" as an agency relationship involving two or more clients who are represented by different licensees within the same broker company. Provides that, in an in-house agency relationship, an individual licensee affiliated with a broker company represents only the client with which the licensee is working. Requires a broker to complete at least eight hours of approved continuing education per year (instead of 12 hours) but requires a broker to complete at least 36 hours of approved continuing education per three year cycle. Makes additional changes concerning brokers and broker companies and corresponding changes in current law.

Effective: July 1, 2014 (retroactive); July 1, 2015.

Merritt, Houchin, Broden, Randolph

January 12, 2015, read first time and referred to Committee on Commerce & Technology.
January 20, 2015, amended, reported favorably — Do Pass.
February 3, 2015, read second time, amended, ordered engrossed.

SB 408—LS 7317/DI 55



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February 4, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 408

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 25-34.1-1-2, AS AMENDED BY P.L.200-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. As used in this article:
4 (1) "Person" means an individual, a partnership, a corporation, or
5 a limited liability company.
6 (2) "Commission" means the Indiana real estate commission.
7 (3) "Real estate" means any right, title, or interest in real property.
8 (4) "Broker" means a person who:
9 (A) for consideration, sells, buys, trades, exchanges, options,
10 leases, rents, manages, lists, or appraises real estate or
11 negotiates or offers to perform any of those acts; and
12 (B) is acting in association with and under the auspices of a
13 managing broker **and broker company**.
14 (5) "License" means a broker license issued under this article and

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which is not expired, suspended, or revoked.

(6) "Licensee" means a person who holds a license issued under this article. The term does not include a person who holds a real estate appraiser license or certificate issued under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

(7) "Course approval" means approval of a broker course granted under this article which is not expired, suspended, or revoked.

(8) "Licensing agency" means the Indiana professional licensing agency established by IC 25-1-5-3.

(9) "Board" refers to the real estate appraiser licensure and certification board established under IC 25-34.1-8-1.

(10) "Commercial real estate" means a parcel of real estate other than real estate containing one (1) to four (4) residential units. This term does not include single family residential units such as:

- (A) condominiums;
- (B) townhouses;
- (C) manufactured homes; or
- (D) homes in a subdivision;

when sold, leased, or otherwise conveyed on a unit-by-unit basis, even if those units are part of a larger building or parcel of real estate containing more than four (4) residential units.

(11) "Out-of-state commercial broker" includes a person, a partnership, an association, a limited liability company, a limited liability partnership, or a corporation that is licensed to do business as a broker in a jurisdiction other than Indiana.

(12) "Out-of-state commercial salesperson" includes a person affiliated with an out-of-state commercial broker who is not licensed as a broker under this article.

(13) "Managing broker" refers to ~~a~~ **an individual** broker whom the commission holds responsible for the actions of licensees who are affiliated with the ~~managing broker and who meets the requirements of IC 25-34.1-4-0.5.~~ **company.**

(14) "Broker company" means a licensee that is a business engaged in the activities described in IC 25-34.1-3-2(a), whether as a sole proprietorship, a partnership, a limited liability company, or a corporation. In the case of a broker company that is a sole proprietorship, the individual broker who is the sole proprietor is the broker company and the managing broker for the broker company.

SECTION 2. IC 25-34.1-3-4.1, AS AMENDED BY P.L.127-2012, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 4.1. (a) To obtain a broker license, an individual must:

(1) be at least eighteen (18) years of age before applying for a license and must not have a conviction for:

(A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11;

(B) a crime that has a direct bearing on the individual's ability to practice competently; or

(C) a crime that indicates the individual has the propensity to endanger the public;

(2) have a high school diploma or a general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18;

(3) have successfully completed an approved broker course of study as prescribed in IC 25-34.1-5-5;

(4) apply for a license by submitting the application fee prescribed by the commission and an application specifying:

(A) the name, address, and age of the applicant;

(B) the ~~name under broker company with~~ which the applicant intends to ~~conduct business~~ **associate**;

(C) the address ~~where the business is to be conducted~~; **of the broker company**;

(D) proof of compliance with subdivisions (2) and (3); and

(E) any other information the commission requires;

(5) pass a written examination prepared and administered by the commission or its duly appointed agent; and

(6) within one (1) year after passing the commission examination, submit the license fee established by the commission under IC 25-1-8-2. If an individual applicant fails to file a timely license fee, the commission shall void the application and may not issue a license to that applicant unless that applicant again complies with the requirements of subdivisions (4) and (5) and this subdivision.

(b) To obtain a broker license, a partnership must:

(1) have as partners only individuals who are licensed brokers;

(2) have at least one (1) partner who

~~(A) is a resident of Indiana; or~~

~~(B) is qualifies as a managing broker under IC 25-34.1-4-3(b);~~

IC 25-34.1-4-0.5 and IC 25-34.1-4-3;

(3) cause each employee of the partnership who acts as a broker to be licensed; and

(4) submit the license fee established by the commission under



IC 25-1-8-2 and an application setting forth the name and residence address of each partner and the information prescribed in subsection (a)(4).

(c) To obtain a broker license, a corporation must:

(1) have a licensed broker:

(A) residing in Indiana who is either an officer of the corporation or, if no officer resides in Indiana, the highest ranking corporate employee in Indiana with authority to bind the corporation in real estate transactions; or

(B) who ~~is~~ **qualifies as** a managing broker under ~~IC 25-34.1-4-3(b);~~ **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**

(2) cause each employee of the corporation who acts as a broker to be licensed; and

(3) submit the license fee established by the commission under IC 25-1-8-2, an application setting forth the name and residence address of each officer and the information prescribed in subsection (a)(4), a copy of the certificate of incorporation, and a certificate of good standing of the corporation issued by the secretary of state.

(d) To obtain a broker license, a limited liability company must:

(1) if a member-managed limited liability company:

(A) have as members only individuals who are licensed brokers; and

(B) have at least one (1) member who ~~is:~~

(i) ~~a resident of Indiana; or~~

(ii) **qualifies as** a managing broker under ~~IC 25-34.1-4-3(b);~~ **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**

(2) if a manager-managed limited liability company, have a licensed broker:

(A) residing in Indiana who is either a manager of the company or, if no manager resides in Indiana, the highest ranking company officer or employee in Indiana with authority to bind the company in real estate transactions; or

(B) who ~~is~~ **qualifies as** a managing broker under ~~IC 25-34.1-4-3(b);~~ **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**

(3) cause each employee of the limited liability company who acts as a broker to be licensed; and

(4) submit the license fee established by the commission under IC 25-1-8-2 and an application setting forth the information prescribed in subsection (a)(4), together with:

(A) if a member-managed company, the name and residence address of each member; or



(B) if a manager-managed company, the name and residence address of each manager, or of each officer if the company has officers.

(e) Licenses granted to partnerships, corporations, and limited liability companies are issued, expire, are renewed, and are effective on the same terms as licenses granted to individual brokers, except as provided in subsection (h), and except that expiration or revocation of the license of:

(1) any partner in a partnership or all individuals in a corporation satisfying subsection (c)(1); or

(2) a member in a member-managed limited liability company or all individuals in a manager-managed limited liability company satisfying subsection (d)(2);

terminates the license of that partnership, corporation, or limited liability company.

(f) Upon the applicant's compliance with the requirements of subsection (a), (b), or (c), the commission shall issue the applicant a broker license and an identification card which certifies the issuance of the license and indicates the expiration date of the license. The license shall be displayed at the broker's place of business. For at least two (2) years after the issuance of a license, the ~~license must be assigned to individual~~ **cannot be** a managing broker. An individual who applies for a broker's license after June 30, 2014, must, during the first two (2) years after the license is issued, take and pass at least thirty (30) hours of postlicensing education focused on the practical matters of real estate transactions instead of the continuing education requirements under IC 25-34.1-9.

(g) Unless the license is renewed, a broker license expires, for individuals, on a date specified by the licensing agency under IC 25-1-6-4 and expires three (3) years after the initial expiration date. An applicant for renewal shall submit an application in the manner prescribed by the commission and pay the renewal fee established by the commission under IC 25-1-8-2 on or before the renewal date specified by the licensing agency. If the holder of a license does not renew the license by the date specified by the licensing agency, the license expires and becomes invalid without the commission taking any action.

(h) If the holder of a license under this section fails to renew the license on or before the date specified by the licensing agency, the license may be reinstated by the commission if the holder of the license, not later than three (3) years after the expiration of the license, meets the requirements of IC 25-1-8-6(c).



(i) If a license under this section has been expired for more than three (3) years, the license may be reinstated by the commission if the holder meets the requirements for reinstatement under IC 25-1-8-6(d).

(j) A partnership, corporation, or limited liability company may ~~not~~ be **only** a broker **company**, except as authorized in IC 23-1.5. An individual broker who associates with a ~~managing~~ broker **company** shall immediately notify the commission:

(1) of the name and business address of the ~~managing~~ broker **company with which the individual broker is associating**; and

(2) of any changes of ~~managing the broker company with which the individual broker is associated~~ that may occur.

Upon receiving notice under subdivision (1) or (2), the commission shall ~~then~~ change the address of the individual broker on its records to that of the ~~managing~~ broker company.

SECTION 3. IC 25-34.1-3-5, AS AMENDED BY P.L.127-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A resident of another state ~~meeting who meets~~ the requirements of this chapter may be licensed.

(b) A nonresident broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

(c) The requirements of ~~this section~~ **subsections (a) and (b)** may be waived for individuals ~~of who reside in~~ or **are** moving from other jurisdictions if the following requirements are met:

(1) The jurisdiction grants the same privilege to the licensees of this state.

(2) The individual is licensed in that jurisdiction.

(3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.

(4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state.

However, subdivision (1) need not be met in order for the requirements of subsections (a) and (b) to be waived in the case of an individual moving to Indiana from another jurisdiction.

SECTION 4. IC 25-34.1-4-0.5, AS ADDED BY P.L.127-2012, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 0.5. Except as provided in section 6 of this



chapter, to become a managing broker, an individual must:

- (1) hold ~~a~~ **an active** broker's license for at least two (2) years; and
- (2) take and pass at least twenty-four (24) hours of broker management courses approved by the commission.

SECTION 5. IC 25-34.1-4-1, AS AMENDED BY P.L.127-2012, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. A **broker company and its** managing broker ~~is are~~ responsible under this article for the actions of any broker who is associated with the ~~managing~~ **broker company**. Any ~~managing~~ **broker who company that** maintains two (2) or more separate offices for associated licensees shall notify the commission of the name and address of the broker who manages each office.

SECTION 6. IC 25-34.1-4-2, AS AMENDED BY P.L.127-2012, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. Except as provided in IC 23-1.5, a partnership broker, corporate broker, or limited liability company broker:

- (1) may act only as a ~~managing~~ **broker company**; and
- (2) shall designate to the commission a ~~licensed individual managing~~ **broker who is a partner or a corporate representative satisfying IC 25-34.1-3-4.1(c)(1) or a member-managed limited liability company member or a manager-managed limited liability company representative satisfying IC 25-34.1-3-4.1(d)(2); meets the requirements for managing brokers set forth in IC 25-34.1-3-4.1** to be primarily responsible to the commission for its actions.

SECTION 7. IC 25-34.1-4-3, AS AMENDED BY P.L.127-2012, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b), each individual who is a managing broker ~~or is designated by a partnership, corporation, or a limited liability company pursuant to section 2 of this chapter~~ shall be a resident of Indiana.

(b) A nonresident

- (1) ~~individual broker~~; or
- (2) ~~individual designated by a partnership, corporation, or limited liability company under section 2 of this chapter~~;

may be a managing broker if ~~all~~ **none of** the licensees ~~affiliated associated~~ with the ~~broker, partnership, corporation, or limited liability company managing broker's broker company~~ are ~~not~~ residents of Indiana.

SECTION 8. IC 25-34.1-4-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 3.1. An**



individual who, on June 30, 2014, was:

(1) a principal broker; or

(2) the designated individual broker under IC 25-34.1-4-2 (as in effect on June 30, 2014) of a partnership broker, corporate broker, or limited liability company broker;

became a managing broker on July 1, 2014.

SECTION 9. IC 25-34.1-4-4, AS AMENDED BY P.L.127-2012, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. Notwithstanding IC 23-1.5, the association of a broker with a managing broker company, as provided by this article, creates an independent contractor relationship unless otherwise specified by a written contract entered into by the managing broker company and the broker.

SECTION 10. IC 25-34.1-4-5, AS AMENDED BY P.L.127-2012, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Each managing broker company:

(1) shall keep in one (1) or more trust accounts (interest or noninterest bearing) all funds belonging to others that come into the possession of the managing broker company or of any broker whose license the managing broker company is holding; and

(2) shall clearly identify any account containing those funds as a trust account.

The trust accounts shall contain all earnest money deposits, funds held for closing escrows, sale proceeds not yet disbursed, and all other funds belonging to others.

(b) The managing broker company shall not use any trust account for the deposit of any personal funds or other business funds and shall keep a detailed record of the funds and any interest accrued in each trust account that identifies the amount of funds held for each beneficiary. Any interest earned shall be held for the beneficiary.

(c) Upon:

(1) the death of the sole proprietor, in the case of a sole proprietorship broker company; or

(2) the termination of a managing broker company; or

(3) the expiration, revocation, or suspension of the managing broker's a broker company's license;

the commission shall take custody of each trust account of the broker company and may appoint a successor trustee to protect and distribute the proceeds of that account.

SECTION 11. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of:



(1) the death of ~~an individual managing the sole proprietor of a sole proprietorship~~ broker **company**; or

(2) the termination of a partnership ~~managing~~ broker **company** by the death of a partner;

a broker formerly associated with the ~~managing~~ broker **company** may continue to carry out business contracted for before the death **of the sole proprietor** or termination of the ~~managing~~ broker **company** for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another ~~managing~~ broker **company**, the broker may not undertake any new business.

(b) Upon associating with a new ~~managing~~ broker **company**, the broker may conduct on behalf of the deceased **proprietor** or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the ~~managing~~ broker **company**. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another ~~managing~~ broker **company**.

(d) This section applies only to matters of licensing and responsibility under this article and does not affect the transfer of the deceased ~~managing~~ broker's property interests as provided by IC 29 and other laws of succession.

SECTION 12. IC 25-34.1-5-1, AS AMENDED BY P.L.127-2012, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. No person shall conduct, solicit or accept student enrollment for a broker course as prescribed in this chapter without:

(1) the approval of the course by the commission; and

(2) the issuance of a permit under section 15 of this chapter.

SECTION 13. IC 25-34.1-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) The **following expire on December 31 of each calendar year:**

(1) The approval of ~~courses~~ a course by the commission.

(2) A permit issued under section 15 of this chapter. ~~expires on the thirty-first day of December of each calendar year.~~

(b) To obtain renewal of approval for the ensuing calendar year, the school must submit to the commission by November 30 of the current year:



- (1) a letter requesting renewal;
- (2) an annual report; and
- (3) a bond in the amount of twenty percent (20%) of the previous year's total tuition, but in no event less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).

SECTION 14. IC 25-34.1-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. The commission may deny, suspend, or revoke:

- (1) the approval of any course; and**
- (2) the permit issued to a school under section 15 of this chapter;**

if it determines the school failed to comply with the standards established in this chapter and the commission's ~~regulations~~ **rules**.

SECTION 15. IC 25-34.1-5-15, AS AMENDED BY P.L.2-2014, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. (a) Each real estate school **approved under this chapter to conduct a prelicensing broker course** must have a permit issued by the commission.

(b) A real estate school issued a permit under subsection (a) must meet the following requirements:

- (1) For online courses, an instructor that has been issued a permit under this chapter must be available during normal business hours.
- (2) Course rosters must be provided to the commission each month.
- (3) The school must pay the permit fees established by the commission under subsection (d).

(c) ~~The commission shall establish a permit period for real estate schools.~~ **To remain in effect**, a permit issued under this section must be renewed ~~at the end of the period established~~ by the commission **before its expiration under section 7(a) of this chapter**.

(d) The commission shall establish, by rule adopted under IC 4-22-2, fees for permits under this section.

(e) A school must annually file with the commission a list of courses offered by the school.

SECTION 16. IC 25-34.1-9-11, AS AMENDED BY P.L.127-2012, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: Sec. 11. (a) The approved education requirement is as follows:

- (1) At least ~~twelve (12)~~ **eight (8)** hours per year **and at least thirty-six (36) hours per three (3) year renewal cycle** in any of the following subjects, as determined by the commission:



- 1 (A) License and escrow law.
- 2 (B) Anti-trust law.
- 3 (C) Civil rights law.
- 4 (D) Agency law.
- 5 (E) Listing contracts and purchase agreements.
- 6 (F) Ethics and professionals standards.
- 7 (G) Settlement procedures.
- 8 (H) Appraising.
- 9 (I) Property management.
- 10 (J) Farm property management.
- 11 (K) Commercial brokerage and leasing.
- 12 (L) Financing.
- 13 (M) Residential brokerage.
- 14 (N) Land development.
- 15 (O) Legislative issues affecting the real estate practice.
- 16 (P) Other courses approved by the commission.
- 17 (b) An attorney in good standing licensed to practice law in Indiana
- 18 may satisfy the requirements of subsection (a) by completing the
- 19 number of hours required by subsection (a) in continuing legal
- 20 education courses in the subject matters listed in subsection (a).
- 21 (c) An individual who applies for a broker's license after June 30,
- 22 2014, must, during the first two (2) years after the license is issued,
- 23 take and pass at least thirty (30) hours of postlicensing education
- 24 focused on the practical matters of real estate transactions instead of
- 25 the continuing education requirements under this chapter.
- 26 (d) For license renewal, a managing broker must complete at least
- 27 ~~twelve (12)~~ **eight (8)** hours of continuing education each year **and at**
- 28 **least thirty-six (36) hours per three (3) year renewal cycle.** At least
- 29 four (4) hours of the continuing education **each year** must be dedicated
- 30 to the necessary business and management skills and legal knowledge
- 31 needed by a managing broker. The commission shall develop or
- 32 approve the continuing education courses for managing brokers.
- 33 SECTION 17. IC 25-34.1-10-6.5 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6.5. As used in this
- 35 chapter, "in-house agency relationship" means an agency relationship
- 36 involving two (2) or more clients who are represented by different
- 37 licensees within the same ~~real estate firm.~~ **broker company.**
- 38 SECTION 18. IC 25-34.1-10-12.5, AS AMENDED BY
- 39 P.L.150-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS
- 40 [EFFECTIVE JULY 1, 2015]: Sec. 12.5. (a) An individual licensee
- 41 affiliated with a ~~managing~~ **broker company** represents only the client
- 42 with which the licensee is working in an in-house agency relationship.



1 A client represented by an individual licensee affiliated with a
 2 ~~managing~~ broker **company** is represented only by that licensee to the
 3 exclusion of all other licensees. A managing broker does not represent
 4 any party in such transactions unless the managing broker has an
 5 agency relationship to personally represent a client.

6 (b) A licensee who personally represents both the seller and buyer
 7 or both the landlord and tenant in a real estate transaction is a limited
 8 agent and is required to comply with the provisions of this chapter
 9 governing limited agents.

10 (c) A licensee representing a client in an in-house agency
 11 relationship owes the client duties and obligations set forth in this
 12 chapter and shall not disclose material or confidential information
 13 obtained from the client to other licensees, except to the managing
 14 broker for the purpose of seeking advice or assistance for the client's
 15 benefit.

16 (d) A **broker company**, a managing broker, and any affiliated
 17 licensee shall take reasonable and necessary care to protect any
 18 material or confidential information disclosed by a client to the client's
 19 in-house agent.

20 (e) In all in-house agency relationships, a **broker company**, a
 21 managing broker, and an individual licensee possess only actual
 22 knowledge and information. There is no imputation of agency,
 23 knowledge, or information among or between clients, **the broker**
 24 **company**, the managing broker, and licensees. Information contained
 25 in records of prior transactions maintained by the ~~brokerage or agency~~
 26 **broker company** concerning any existing or previous adverse material
 27 facts or risks with respect to real property may not be imputed to a
 28 broker or affiliated licensee unless the broker or affiliated licensee had
 29 actual knowledge of any adverse material facts or risks with respect to
 30 the real property. A person may not bring a cause of action against a
 31 broker or licensee for failure to disclose adverse material facts or risks
 32 if the cause of action is based on imputed knowledge of the adverse
 33 material facts or risks.

34 SECTION 19. IC 25-34.1-10-13, AS AMENDED BY P.L.127-2012,
 35 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2015]: Sec. 13. (a) A managing broker shall develop and
 37 enforce a **broker company** written office policy that identifies and
 38 describes the agency relationships that a licensee may have with a
 39 seller, landlord, buyer, or tenant and that specifically permits or rejects
 40 the practice of disclosed limited agency.

41 (b) At the beginning of an agency relationship, a licensee shall
 42 disclose in writing the ~~managing broker's~~ **broker company's** written



1 office policy set forth in this section before the disclosure by the
 2 potential seller, landlord, buyer, or tenant of any confidential
 3 information specific to that potential seller, landlord, buyer, or tenant.

4 (c) Parties to a real estate transaction shall be advised whether
 5 compensation will be shared with other ~~managing brokers who broker~~
 6 **companies that** may represent other parties to the transaction whose
 7 interests are different or even adverse.

8 (d) The payment of compensation does not create an agency
 9 relationship between a licensee and a seller, landlord, buyer, or tenant.

10 SECTION 20. IC 27-7-3-15.5, AS AMENDED BY P.L.127-2012,
 11 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2015]: Sec. 15.5. (a) This section applies to the following
 13 transactions:

14 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

15 (A) is:

16 (i) a first lien purchase money mortgage transaction; or

17 (ii) a refinancing transaction; and

18 (B) is closed by a closing agent after December 31, 2009.

19 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:

20 (A) does not involve a mortgage transaction described in
 21 subdivision (1); and

22 (B) is closed by a closing agent (as defined in
 23 IC 6-1.1-12-43(a)(2)) after December 31, 2011.

24 (b) For purposes of this subsection, a person described in this
 25 subsection is involved in a transaction to which this section applies if
 26 the person participates in or assists with, or will participate in or assist
 27 with, a transaction to which this section applies. The department shall
 28 establish and maintain an electronic system for the collection and
 29 storage of the following information, to the extent applicable,
 30 concerning a transaction to which this section applies:

31 (1) In the case of a transaction described in subsection (a)(1), the
 32 name and license number (under IC 23-2-5) of each loan
 33 brokerage business involved in the transaction.

34 (2) In the case of a transaction described in subsection (a)(1), the
 35 name and license or registration number of any mortgage loan
 36 originator who is:

37 (A) either licensed or registered under state or federal law as
 38 a mortgage loan originator consistent with the Secure and Fair
 39 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 40 Title V); and

41 (B) involved in the transaction.

42 (3) The name and license number (under IC 25-34.1) of each:



- 1 (A) ~~managing~~ broker **company**; and
- 2 (B) broker if any;
- 3 involved in the transaction.
- 4 (4) The following information:
- 5 (A) The:
- 6 (i) name of; and
- 7 (ii) code assigned by the National Association of Insurance
- 8 Commissioners (NAIC) to;
- 9 each title insurance underwriter involved in the transaction.
- 10 (B) The type of title insurance policy issued in connection with
- 11 the transaction.
- 12 (5) The name and license number (under IC 27-1-15.6) of each
- 13 title insurance agency and agent involved in the transaction as a
- 14 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 15 (6) The following information:
- 16 (A) The name and:
- 17 (i) license or certificate number (under IC 25-34.1-3-8) of
- 18 each licensed or certified real estate appraiser; or
- 19 (ii) license number (under IC 25-34.1) of each broker;
- 20 who appraises the property that is the subject of the
- 21 transaction.
- 22 (B) The name and registration number (under
- 23 IC 25-34.1-11-10) of any appraisal management company that
- 24 performs appraisal management services (as defined in
- 25 IC 25-34.1-11-3) in connection with the transaction.
- 26 (7) In the case of a transaction described in subsection (a)(1), the
- 27 name of the creditor and, if the creditor is required to be licensed
- 28 under IC 24-4.4, the license number of the creditor.
- 29 (8) In the case of a transaction described in subsection
- 30 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
- 31 the subject of the transaction.
- 32 (9) In the case of a transaction described in subsection
- 33 (a)(1)(A)(i), the following information:
- 34 (A) The name of the buyer of the property that is the subject of
- 35 the transaction.
- 36 (B) The purchase price of the property that is the subject of the
- 37 transaction.
- 38 (C) The loan amount of the mortgage transaction.
- 39 (10) In the case of a transaction described in subsection (a)(2), the
- 40 following information:
- 41 (A) The name of the buyer of the property that is the subject of
- 42 the transaction.



- 1 (B) The purchase price of the property that is the subject of the
- 2 transaction.
- 3 (11) In the case of a transaction described in subsection
- 4 (a)(1)(A)(ii), the following information:
- 5 (A) The name of the borrower in the mortgage transaction.
- 6 (B) The loan amount of the refinancing.
- 7 (12) The:
- 8 (A) name; and
- 9 (B) license number, certificate number, registration number,
- 10 or other code, as appropriate;
- 11 of any other person that is involved in a transaction to which this
- 12 section applies, as the department may prescribe.
- 13 (c) The system established by the department under this section
- 14 must include a form that:
- 15 (1) is uniformly accessible in an electronic format to the closing
- 16 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
- 17 (2) allows the closing agent to do the following:
- 18 (A) Input information identifying the property that is the
- 19 subject of the transaction by lot or parcel number, street
- 20 address, or some other means of identification that the
- 21 department determines:
- 22 (i) is sufficient to identify the property; and
- 23 (ii) is determinable by the closing agent.
- 24 (B) Subject to subsection (d) and to the extent determinable,
- 25 input the applicable information described in subsection (b).
- 26 (C) Respond to the following questions, if applicable:
- 27 (i) "On what date did you receive the closing instructions
- 28 from the creditor in the transaction?".
- 29 (ii) "On what date did the transaction close?".
- 30 (D) Submit the form electronically to a data base maintained
- 31 by the department.
- 32 (d) Not later than the time of the closing, each person described in
- 33 subsection (b), other than a person described in subsection (b)(8),
- 34 (b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the
- 35 transaction the person's:
- 36 (1) legal name; and
- 37 (2) license number, certificate number, registration number, or
- 38 NAIC code, as appropriate;
- 39 to allow the closing agent to comply with subsection (c)(2)(B). In the
- 40 case of a transaction described in subsection (a)(1), the person
- 41 described in subsection (b)(7) shall, with the cooperation of any person
- 42 involved in the transaction and described in subsection (b)(6)(A) or



(b)(6)(B), provide the information described in subsection (b)(6). In the case of a transaction described in subsection (a)(1)(A)(ii), the person described in subsection (b)(7) shall also provide the information described in subsection (b)(11). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the ~~managing~~ broker **company** for the person described in subsection (b)(3)(B). The closing agent shall determine the information described in subsection (b)(8), (b)(9), and (b)(10) from the HUD-1 settlement statement, or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.

(e) Except for a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D); except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

(1) establish;



(2) collect; and
 (3) change as necessary;
 an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

(1) require the fee to be paid:

(A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and

(B) by the borrower, the seller, or the buyer in the transaction;

(2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and

(3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SECTION 21. IC 32-28-12.5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. As used in this chapter, "broker company" has the meaning set forth in IC 25-34.1-1-2.**

SECTION 22. IC 32-28-12.5-2, AS AMENDED BY P.L.127-2012, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 2. As used in this chapter, "fees or commissions" means compensation owed to a managing broker company for performing services requiring a license under IC 25-34.1-3-2.**

SECTION 23. IC 32-28-12.5-5, AS AMENDED BY P.L.127-2012, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 5. A managing broker company may have a lien upon commercial real estate, or any interest in commercial real estate, that is the subject of a purchase, a lease, or other conveyance to a buyer or tenant, in the amount that the managing broker company is due for licensed services, including brokerage fees, consulting fees, and management fees due the managing broker company under a written agreement, a contract, or another written instrument:**

(1) signed by:

(A) the owner of an interest in the commercial real estate or by



the owner's authorized agent; or

(B) a prospective buyer or prospective tenant, or by the buyer's or tenant's authorized agent; and

(2) entered into after June 30, 2006.

A lien under this chapter is available to the ~~managing~~ broker **company** named in the written agreement, contract, or other written instrument signed by the owner, buyer, or tenant, or their respective agents, and not to an employee or independent contractor of the ~~managing~~ broker **company**.

SECTION 24. IC 32-28-12.5-6, AS AMENDED BY P.L.127-2012, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) A lien under this chapter attaches to commercial real estate or an interest in commercial real estate upon:

(1) the ~~managing~~ broker **company** being entitled to fees or commissions under a written agreement, a contract, or another instrument signed by the owner, buyer, or tenant of the commercial real estate, or by an authorized agent of the owner, buyer, or tenant; and

(2) except as provided in sections 8 and 9 of this chapter, the ~~managing~~ broker **company** recording a notice of lien in the office of the recorder of the county in which the commercial real estate or an interest in the commercial real estate is located:

(A) before the recording of the deed for the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien, if the ~~managing~~ broker **company** claims fees or commissions from the party conveying or transferring an interest in the commercial real estate; or

(B) not later than ninety (90) days after the recording of the deed or other instrument for the purchase or other conveyance or transfer of the commercial real estate, if the ~~managing~~ broker **company** claims fees or commissions from the party receiving a conveyance or transfer of an interest in the commercial real estate.

(b) A lien under this chapter attaches on the date of the recording of the notice of the lien under subsection (a)(2) and does not relate back to the date of the written agreement, contract, or other written instrument described in subsection (a)(1).

SECTION 25. IC 32-28-12.5-7, AS AMENDED BY P.L.127-2012, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section does not apply:

(1) to fees or commissions that arise from a lease, including fees or commissions for a sale of the property, lease expansions, or



1 lease renewals;

2 (2) if a ~~managing broker's~~ **broker company's** fees or
3 commissions have been paid in full; or

4 (3) if a ~~managing broker~~ **company** waives the notice requirements
5 of this section in writing.

6 (b) Not later than ten (10) days before the planned closing of a
7 transaction involving the sale of commercial real estate, the owner shall
8 notify the following persons of the date of the closing, the time of the
9 closing, the address of the closing, and of the name of the closing
10 agent, title company, or title insurance agent:

11 (1) One (1) or more ~~managing brokers~~ **broker companies** to
12 whom the owner owes fees or commissions.

13 (2) The closing agent, title company, or title insurance agent
14 involved in the transaction.

15 Notice under this subsection shall be sent by registered or certified
16 mail, return receipt requested, or by another means of service
17 authorized by the Indiana trial rules that provides proof that the
18 addressee has received the notice.

19 (c) To exercise its rights under this chapter to file a lien after receipt
20 of the notice under subsection (b), the ~~managing broker~~ **company** must
21 notify the closing agent, title company, or title insurance agent at the
22 address in the notice of the amount of the fees or commissions owed
23 before the time of the closing stated in the notice.

24 (d) If the ~~managing broker~~ **company** does not attend the closing of
25 a transaction involving the sale of commercial real estate, the owner
26 shall certify in writing at the closing, under the penalties of perjury:

27 (1) that:

28 (A) the owner has notified the ~~managing broker~~ **company** in
29 accordance with subsection (b); and

30 (B) the ~~managing broker~~ **company** received the notice; or

31 (2) that the ~~managing broker~~ **company** has been paid in full.

32 SECTION 26. IC 32-28-12.5-8, AS AMENDED BY P.L.127-2012,
33 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2015]: Sec. 8. (a) This section applies to a transaction
35 involving the conveyance or transfer of commercial real estate in
36 which:

37 (1) payment to a ~~managing broker~~ **company** is due in
38 installments; and

39 (2) a part of the installment payments is due only after the
40 conveyance or transfer of the commercial real estate involved in
41 the transaction.

42 (b) Subject to subsection (c), the ~~managing broker~~ **company** may



record a notice of lien for those payments described in subsection (a)(2) at any time after the transfer or conveyance, but not later than ninety (90) days after the date on which the payment is due. A notice of lien under this section is effective as a lien against the transferor's interest in the commercial real estate only to the extent consideration is still owed to the transferor by the transferee. However, the lien is effective against the transferee's interest in the commercial real estate without the limitation described in this subsection.

(c) A single claim for a lien recorded:

(1) before the transfer or conveyance of the commercial real estate; and

(2) with respect to all payments due in installments;

is valid and enforceable with respect to payments due after the transfer or conveyance. However, as payments or partial payments of fees or commissions are received by the ~~managing~~ broker **company**, the ~~managing~~ broker **company** shall, by providing partial releases with respect to those payments, reduce the amount due the ~~managing~~ broker **company** under the notice of lien described in this subsection.

SECTION 27. IC 32-28-12.5-9, AS AMENDED BY P.L.127-2012, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) Subject to subsection (b), in the case of a lease of commercial real estate, including a sublease or an assignment of a lease, the notice of a lien under this chapter must be recorded not later than ninety (90) days after the tenant takes possession of the leased premises. However, if:

(1) the transferor personally serves, on the ~~managing~~ broker **company** entitled to claim a lien, written notice of the intended execution of the lease; and

(2) the notice described in subdivision (1) is served not later than ten (10) days before the date of the intended execution of the lease;

the ~~managing broker's~~ **broker company's** notice of lien must be recorded before the date indicated in the notice described in subdivision (1) for the execution of the lease. The lien attaches on the recording of the notice of lien and does not relate back to the date of the written agreement, contract, or written instrument under which the ~~managing~~ broker **company** is entitled to fees or commissions.

(b) As used in this subsection, "future fees or commissions" refers to fees or commissions:

(1) other than those fees or commissions due to a ~~managing~~ broker **company** upon the execution of a lease under subsection

(a); or



(2) due to the ~~managing~~ broker **company** upon the exercise of an option to:

(A) expand the leased premises;

(B) renew or extend a lease; or

(C) purchase the commercial real estate;

under a written agreement, a contract, or another written instrument signed by the owner or tenant of the commercial real estate. The ~~managing~~ broker **company** may record a memorandum of lien at any time after execution of the lease or other written agreement, contract, or written instrument that contains rights to future fees or commissions. The ~~managing~~ broker **company** shall record a notice of lien no later than ninety (90) days after the occurrence of a condition for which future fees or commissions are claimed, but may not file a notice of lien against an owner's property if the tenant is the sole party liable for payment of the future fees or commissions. Except as provided in section 11(a) or 13(b) of this chapter, an action to foreclose a lien to collect future fees or commissions must be commenced not later than one (1) year after the recording of the notice of the lien. A memorandum of lien recorded under this chapter must meet the requirements of section 12(1)(A), 12(1)(B), 12(1)(C), 12(1)(E), 12(2), 12(3), and 12(4) of this chapter. A memorandum of lien shall not constitute a lien against the real estate but shall provide notice of the right to future fees or commissions.

(c) If:

(1) commercial real estate is sold or otherwise conveyed before the date on which future fees or commissions are due; and

(2) the ~~managing~~ broker **company** has recorded a valid memorandum of lien or notice of lien before the sale or other conveyance of the commercial real estate;

the purchaser or transferee is considered to have notice of and takes title to the commercial real estate subject to the right to future fees or commissions and, if applicable, notice of lien. However, if a ~~managing~~ broker **company** claiming future fees or commissions fails to record a memorandum of lien or notice of lien for the future fees or commissions before the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, the ~~managing~~ broker **company** may not claim a lien on the commercial real estate. This subsection does not limit or otherwise affect claims or defenses a ~~managing~~ broker **company** or owner or any other party may have in law or equity.

SECTION 28. IC 32-28-12.5-10, AS AMENDED BY P.L.127-2012, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 10. A **managing broker company** shall, not later than ten (10) days after recording a notice of lien under this chapter, personally serve or mail, by registered or certified mail, a copy of the notice of lien to the owner of record of the commercial real estate, or to the agent of the owner of record, at the address of the owner stated in the written agreement, contract, or other written instrument on which the claim for the lien is based. If the address of the owner or the owner's agent is not stated, the **managing broker company** shall personally serve or mail, by registered or certified mail, a copy of the notice of the lien to the address where real estate taxes are sent for the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in the United States mail with postage prepaid. Personal service of the notice of the lien is effective upon receipt by the owner or the agent of the owner of record. A **managing broker's broker company's** lien is unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the manner required by this section.

SECTION 29. IC 32-28-12.5-11, AS AMENDED BY P.L. 127-2012, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. (a) The **managing broker company** claiming the lien shall, not later than one (1) year after recording the notice of the lien, commence proceedings to foreclose the lien. However, for future fees or commissions payable over a period in excess of one (1) year from the occurrence of a condition for which such future fees or commissions are claimed, the commencement of the suit must be within one (1) year of the latest date for which future fees or commissions are due. A **managing broker's broker company's** failure to commence proceedings within the time prescribed by this subsection extinguishes the lien and a subsequent notice of lien may not be given for the same claim, nor may that claim be asserted in any other proceedings under this chapter.

(b) A **managing broker company** claiming a lien based upon an option or other right to purchase or lease commercial real estate shall, not later than one (1) year after recording the notice of the lien, commence proceedings to foreclose the lien. A **managing broker's broker company's** failure to commence proceedings within the time prescribed by this subsection extinguishes the lien and a subsequent notice of lien may not be given for the same claim, nor may that claim be asserted in any other proceedings under this chapter.

(c) The foreclosure of a lien recorded under this chapter shall be conducted under the same rules and same procedures applicable to the foreclosure of mortgages upon real estate. A complaint under this



section must contain:

- (1) a brief statement of the written agreement, contract, or other written instrument that is the basis for the lien;
- (2) the date when the written agreement, contract, or other written instrument was made;
- (3) a description of the services performed by the ~~managing~~ broker **company**;
- (4) the amount due and unpaid for the services described in subdivision (3);
- (5) a description of the commercial real estate subject to the notice of lien; and
- (6) other facts reasonably necessary to describe the rights of the parties.

SECTION 30. IC 32-28-12.5-12, AS AMENDED BY P.L.127-2012, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. A notice of lien recorded under this chapter must:

- (1) state:
 - (A) the name of the claimant;
 - (B) the name of the owner of the commercial real estate upon which the lien is claimed;
 - (C) a legal description of the commercial real estate upon which the lien is claimed;
 - (D) the amount for which the lien is claimed; and
 - (E) the license number of the ~~managing broker's~~ **broker company's** license under IC 25-34.1;
- (2) contain a statement that the information contained in the notice is true and accurate to the knowledge of the signatory;
- (3) be signed by the managing broker **responsible for the actions of the broker company** or by a person authorized to sign on behalf of the managing broker; and
- (4) be verified.

SECTION 31. IC 32-28-12.5-13, AS AMENDED BY P.L.127-2012, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. (a) If:

- (1) a memorandum of lien or notice of lien has been recorded with the office of the recorder of the appropriate county; and
- (2) a condition occurs that would preclude the ~~managing~~ broker **company** from receiving fees or commissions under the terms of the written agreement, contract, or other written instrument upon which the lien is based;

the ~~managing~~ broker **company** shall provide to the owner of record of



the commercial real estate, not later than ten (10) days after written demand by the owner of record, a written release or satisfaction of the memorandum of lien or notice of lien.

(b) Upon written demand:

(1) served by the owner, buyer, or tenant described in section 5 of this chapter, or the authorized agent of the owner, buyer, or tenant described in section 5 of this chapter, on the **managing broker company** claiming a lien under this chapter; and

(2) requiring the **managing broker company** to:

(A) bring a suit to enforce the lien; or

(B) file an answer in a pending suit;

the **managing broker company** shall bring a suit or file an answer not later than thirty (30) days after service of the demand. If the **managing broker company** does not bring a suit or file an answer within the time prescribed by this subsection, the lien is extinguished. The service of a written demand under this subsection may be made by registered or certified mail, return receipt requested, or by personal service.

(c) If:

(1) a memorandum of lien or notice of lien under this chapter has been filed with the office of the recorder and the fees or commissions upon which the lien is based have been paid to the **managing broker company** claiming the lien; or

(2) the **managing broker company** fails to institute a suit to enforce the lien within the time prescribed by this chapter;

the **managing broker company** shall, not later than five (5) days after receipt of a written demand from the owner, buyer, or tenant described in section 5 of this chapter for a release or an acknowledgment of satisfaction of the memorandum or lien, acknowledge satisfaction or release of the memorandum or lien in writing.

SECTION 32. IC 32-28-12.5-14, AS AMENDED BY P.L.127-2012, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. If the **managing broker company** and the party from whom fees or commissions are claimed under this chapter agree to alternative dispute resolution, any claim under this chapter must be heard and resolved in the forum agreed to by the parties. The court before which a lien foreclosure proceeding is brought under this chapter retains jurisdiction to enter judgment on the award or other result made or reached under alternative dispute resolution proceedings with respect to all parties to the foreclosure. The **managing broker's broker company's** notice of lien remains of record and the foreclosure proceeding shall be stayed during the pendency of the alternative dispute resolution proceedings.



SECTION 33. IC 32-28-12.5-16, AS AMENDED BY P.L.127-2012, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. Except for a waiver or release of a memorandum or lien provided in consideration of payment of the fees or commissions claimed by a **managing broker company** under this chapter, or except as otherwise provided in section 13 of this chapter, any waiver of a **managing broker's broker company's** right to a lien on commercial property under this chapter is void.

SECTION 34. IC 32-28-12.5-18, AS AMENDED BY P.L.127-2012, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. If:

(1) a claim for a lien under this chapter has been filed with the office of the recorder of the county in which commercial real estate or any interest in commercial real estate is located; and

(2) an escrow account is established among:

(A) the one (1) or more parties allegedly responsible for payment of the fees or commissions on which the lien is based;

(B) the **managing broker company** that filed the lien; and

(C) an independent third party as escrowee;

from the proceeds of the conveyance, or from any other source of funds, in an amount that is at least one hundred ten percent (110%) of the amount of the lien claimed under this chapter;

the lien against the real estate is extinguished and becomes a lien on the funds contained in the escrow account. The establishment of an escrow account described in this section does not constitute cause for any party to refuse to close the transaction.

SECTION 35. IC 32-28-12.5-19, AS AMENDED BY P.L.127-2012, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. (a) If any party, including a **managing broker company**, buyer, or buyer's mortgagee suffers a pecuniary loss as the result of an owner's violation of the notice or certification provisions described in section 7 of this chapter, the party may bring a civil action against the owner for the following:

(1) Actual damages.

(2) The costs of the action.

(3) Reasonable attorney's fees.

However, if the party establishes that the owner's violation of the notice or certification provisions was fraudulent, a court may award the party damages that do not exceed three (3) times actual damages.

(b) It is a defense to an action brought under this section that the most recent address provided by the **managing broker company** to the owner in the agreement, contract, or other written instrument, including



1 a written instrument described in section 5 of this chapter, was
2 incorrect, and as a result of the incorrect address, the principal broker
3 did not receive the owner's notice described in section 7(b) of this
4 chapter, and as a result the ~~managing~~ broker **company** failed to provide
5 the notice as required in section 7(c) of this chapter.

6 SECTION 36. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 408, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete lines 15 through 32.

Page 7, delete lines 33 through 41.

Page 8, delete lines 33 through 42.

Page 9, delete lines 1 through 19, begin a new paragraph and insert:

"SECTION 9. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of the death of an individual managing broker or the termination of a partnership managing broker by the death of a partner, a broker formerly associated with the managing broker may continue to carry out business contracted for before the death or termination of the managing broker, for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another managing broker, the broker may not undertake any new business.

(b) Upon associating with a new managing broker, the broker may conduct on behalf of the deceased or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the managing broker. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another managing broker.

(d) This section applies only to matters of licensing and responsibility under this article and does not affect the transfer of the deceased managing broker's property interests as provided by IC 29 and other laws of succession."

Page 10, line 31, delete "2015]" and insert "2014 (RETROACTIVE)]".

Page 10, line 34, after "year" insert "**renewal**".



Page 11, line 21, after "year" insert "**renewal**".
 Page 11, line 22, after "education" insert "**each year**".
 Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 408 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 408 be amended to read as follows:

Page 4, line 29, after "broker" insert ":".

Page 6, between lines 14 and 15, begin a new paragraph and insert:
 "SECTION 3. IC 25-34.1-3-5, AS AMENDED BY P.L.127-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A resident of another state ~~meeting who meets~~ the requirements of this chapter may be licensed.

(b) A nonresident broker shall file with the commission a written consent that any action arising out of the conduct of the licensee's business in Indiana may be commenced in any county of this state in which the cause of action accrues. The consent shall provide that service of process may be made upon the commission, as agent for the nonresident licensee, and that service in accordance with the Indiana Rules of Trial Procedure subjects the licensee to the jurisdiction of the courts in that county.

(c) The requirements of ~~this section~~ **subsections (a) and (b)** may be waived for individuals ~~of who reside in~~ or **are** moving from other jurisdictions if the following requirements are met:

- (1) The jurisdiction grants the same privilege to the licensees of this state.
- (2) The individual is licensed in that jurisdiction.
- (3) The licensing requirements of that jurisdiction are substantially similar to the requirements of this chapter.
- (4) The applicant states that the applicant has studied, is familiar with, and will abide by the statutes and rules of this state.

However, subdivision (1) need not be met in order for the requirements of subsections (a) and (b) to be waived in the case of



an individual moving to Indiana from another jurisdiction."

Page 7, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 7. IC 25-34.1-4-3.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 3.1. An individual who, on June 30, 2014, was:**

(1) a principal broker; or

(2) the designated individual broker under IC 25-34.1-4-2 (as in effect on June 30, 2014) of a partnership broker, corporate broker, or limited liability company broker;

became a managing broker on July 1, 2014."

Page 8, delete lines 6 through 30, begin a new paragraph and insert:

"SECTION 11. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of:

(1) the death of an individual managing the sole proprietor of a sole proprietorship broker company; or

(2) the termination of a partnership managing broker company by the death of a partner;

a broker formerly associated with the managing broker company may continue to carry out business contracted for before the death of the sole proprietor or termination of the managing broker company for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another managing broker company, the broker may not undertake any new business.

(b) Upon associating with a new managing broker company, the broker may conduct on behalf of the deceased proprietor or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the managing broker company. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker by law until the broker elects to act as a broker for another managing broker company.

(d) This section applies only to matters of licensing and



responsibility under this article and does not affect the transfer of the deceased ~~managing~~ broker's property interests as provided by IC 29 and other laws of succession."

Renumber all SECTIONS consecutively.

(Reference is to SB 408 as printed January 21, 2015.)

MERRITT

